No. 77-682

In the Supreme Court of the United States

OCTOBER TERM, 1977

VILLAGE OF ARLINGTON HEIGHTS, et al.,
Petitioners,

vs.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, et al.,
Respondents,

NORTHWEST OPPORTUNITY CENTER and ELUTERIA D. MALDONADO,
Intervening Respondents.

On Petition For Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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STATEMENT OF THE CASE

Now over seven years have elapsed since Respondent Metropolitan Housing Development Corporation ("MHDC") started the process of developing Lincoln Green to provide high quality integrated housing in a large, racially segregated suburb of the City of Chicago, Illinois. The Petitioner, Arlington Heights "remains almost to-

tally white in a metropolitan area with a significant number of black people." (558 F. 2d 1283, 1289). Under the circumstances of this case the petitioner's action in preventing construction of the MHDC development, Lincoln Green, has "the effect of perpetuating racial segregation in Arlington Heights," in violation of the Fair Housing Act 42 U.S.C. §§ 3601 et seq. (558 F. 2d 1283, 1288).*

MHDC, a not-for-profit corporation organized for the purpose of providing integrated housing for minorities in areas previously unavailable to them, entered into a contract with the Clerics of St. Viator for the purchase of a portion of their land in November of 1970 to be used for a planned development consisting of 190 townhouses for low and moderate income persons using a federal subsidy. Since the land was zoned single family, although used in part for institutional purposes (a high school and novitiate), MHDC petitioned the Trustees of Arlington Heights for a change of zoning to allow townhouse development of the property.

The application for rezoning was turned down by the municipality and suit was instituted in the U.S. District Court alleging the denial of the petition was racially discriminatory and violated, *inter alia,* the Fourteenth Amendment and the Fair Housing Act of 1968. The District Court denied plaintiffs relief and held that Arlington Heights' action did not have racially discriminatory effects and was not racially motivated. The Seventh Circuit Court of Appeals reversed on June 10, 1975 holding

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* The Court of Appeals decision of July 7, 1977 is attached to the Petition For Certiorari herein as Appendix A and references thereto are set forth as "558 F. 2d . . . .". The Supreme Court decision of January 11, 1977, is attached to such petition as Appendix B and references thereto are set forth as "429 U.S. . . ." The Court of Appeals decision of June 10, 1975, is also attached to the petition herein as Appendix C and references thereto are set forth as "517 F.2d . . ."

"that under the facts of this case Arlington Heights' rejection of the Lincoln Green proposal has racially discriminatory effects" in violation of the Fourteenth Amendment. (517 F.2d 412, 422).

The Supreme Court held on January 11, 1977, that the discriminatory effect of petitioner's action was "without independent constitutional significance" and remanded the case "for further consideration of respondents' statutory claims." (429 U.S. 252).

On July 7, 1977, the Court of Appeals rendered its decision with respect to the statutory claims. After a thorough analysis of the pertinent provisions of the Fair Housing Act and the applicable cases, the Court of Appeals enumerated a number of facts and circumstances to be considered in deciding whether, in a particular case, relief should be granted under the statute. The Court of Appeals then held that, under the facts and circumstances of the case, if there is no land other than plaintiffs' property within Arlington Heights which is both properly zoned and suitable for federally-subsidized low-cost housing, the Village's refusal to rezone constituted a violation of section 3604(a) of the Fair Housing Act, and remanded the case to the district court with instructions.

The district court on remand must determine whether the case is moot. In this regard respondents must demonstrate that alternative subsidies are available to them for this development and that Lincoln Green would be racially integrated. As the court of appeals previously concluded, the plaintiffs were unable to find another economically feasible and suitable site in Arlington Heights (517 F.2d 409, 417). The petitioners on remand are now given an opportunity to prove there are suitable and available sites in Arlington Heights and therefore such housing is not totally excluded.

REASONS FOR DENYING THE WRIT

The writ should be denied because the petition fails to state or suggest any special and important reason for review by the Supreme Court and does not show any conflict with decisions of this Court or the courts of appeal. Moreover, there are questions yet to be determined on remand to the district court.

I.

THERE IS NO CONFLICT WITH DECISIONS OF THE SUPREME COURT

After considering this case the Supreme Court remanded for further consideration of respondents' statutory claims because the complaint also alleged that the refusal to rezone violated the Fair Housing Act, 42 U.S.C. §§3601 *et seq.* and the respondents "continue to urge here that a zoning decision made by a public body may, and that petitioners' action did, violate §3604 or §3617." (429 U.S. 252, 270). The court of appeals followed the mandate and decided the issue.

Nor is the decision in conflict with *Washington* v. *Davis*, 426 U.S. 229 (1976). As the court of appeals noted, in that case "the Court created a dichotomy between the equal protection clause and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*" (558 F2d 1283, 1291). The Court in *Washington* reaffirmed the reasoning of *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), which held that a violation of a statute may be found where there is a discriminatory effect. (426 U.S. at 238-39, 246-48.)*

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* *Griggs* has been applied in federal fair housing cases both before and after *Washington* v. *Davis*. See e.g. *United States* v. *Real Estate Development Corp.*, 347 F. supp. 776, 782, (N.D. Miss. 1972); *United States* v. *City of Black Jack Missouri, infra*, 508 F. 2d at 1184, *Residents Advisory Board* v. *Rizzo, infra; Prentice-Hall Equal Opportunity in Housing Reporter, para.* 13,789 (pp. 14, 958-59 n.60).

II.

THE COURT OF APPEALS' DECISION IS IN ACCORD WITH OTHER COURTS OF APPEALS' DECISIONS

The court of appeals' decision is in accordance with the decisions of other courts of appeals that have decided similar questions of violations of the Fair Housing Act. *United States* v. *City of Black Jack Missouri,* 508 F.2d 1179 (8th Cir. 1974), *cert. denied* 422 U.S. 1042 (1975), *Residents Advisory Board* v. *Rizzo,* 425 F. Supp. 987 (1976), ... F.2d ..... (Third Cir. August, 1977), *Kennedy Park Homes* v. *City of Lackawanna,* 318 F. Supp. 669 (W.D.N.Y. 1970) Aff'g 436 F.2d 108 (2nd Cir. 1970) *cert. denied* 401 U.S. 1010 (1971).

For instance, in *Black Jack,* a case similar to this one the Eighth Circuit Court of Appeals found a zoning ordinance that prevented construction of an integrated subsidized housing development in a white community in violation of the Fair Housing Act. The Court of Appeals there held that the plaintiff in such a case:

> need prove no more than the conduct of the defendant actually or predictably results in racial discrimination, in other words, that it has a discriminatory effect. . . . The plaintiff need make no showing whatsoever that the action resulting in racial discrimination in housing was racially motivated. Effect, not motivation, is the touchstone. . . . *United States* v. *City of Black Jack Missouri, supra* 508 F.2d at 1184.

III.

THE PETITION DOES NOT PRESENT ANY QUESTION OF NATIONAL IMPORTANCE

The petition is in part a quarrel with the court of appeals' interpretation of the record and the facts. This Court has said it will not take a case to review whether the court of appeals has properly assessed the record and made a correct interpretation of the facts. *United States* v. *Johnson*, 268 U.S. 220 (1925). The decision of the court of appeals is a limited one and will not have any dire effects. The argument on the standing of Willie Ransome is really a disagreement with the holding of this Court not the court of appeals. The Supreme Court's review of the facts relating to Willie Ransome demonstrates that he has standing. (429 U.S. 252).

Moreover, the repeated claims of Arlington Heights that the petitioner is being asked to take affirmative steps is not correct. It is being asked to cease interfering with MHDC's plans to dedicate their land to furthering the congressionally sanctioned goal of integrated housing (558 F.2d 1283, 1288). Contrary to petitioners' repeated assertions the zoning ordinance of the municipality has not been found valid and is not consistently applied (517 F.2d 412, 415). Contrary to petitioners' further assertions, Arlington Heights is hardly being required to violate its "zoning and planning principles" in view of the numerous times it has approved amendments to its zoning plan to permit thousands of high-rent apartments adjacent to single family neighborhoods.

The district court hearings now mandated will make a final determination with respect to the development. The Court of Appeals has carefully limited the further inquiry and indicated it relates to this particular set of facts and circumstances.

IV.

THE DECISION OF THE COURT OF APPEALS IS CORRECT

The decision of the Court of Appeals is mandated by the language, purpose and legislative history of the federal fair housing laws, as well as interpretations by the Department of Housing and Urban Development, the Courts, and the Justice Department and the Supreme Court's construction of similar civil rights legislation. Under the circumstances of this case the petitioner has an obligation under the Fair Housing Act to refrain from zoning policies that effectively foreclose the construction of any low cost housing within its corporate boundaries.

CONCLUSION

For the foregoing reasons the petition for certiorari should be denied.

Respectfully submitted,

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